COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 133 of 2003

United India Insurance Co. Ltd. …… **Appellant.**

Versus

Bhagwan Singh
and others. ….. **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 27-3-2003, passed in M.A.C.T. Petition No. 193 of 2001, Bhagwan Singh Vs. Ajay Kumara and others, by the Motor Accident Claims Tribunal/District Judge Champawat ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 5,52,400/- along with interest @ 10% per annum in favour of the claimant as against O.P. No.3-appellant. Aggrieved, the Insurance Company-O.P.No.3 has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground that the petition was not maintainable under the Act and on the point of contributory negligence and quantum of compensation and it has been contended the findings of the learned Tribunal are not based on evidence on record.

We have heard learned counsel for the appellant, Mr. D.S.Patni as well as learned counsel for the claimant-respondent Mr. B.S.Khanka, and have carefully gone through the entire material on record including the impugned judgment and award.

Brief facts of the case are that the claimant was driver in Swaraj Mazda Truck No. U.P. 29-1069. He was driving the said Truck on 29.6.2001 from Champawat to Bareilly. At about 2 a.m. in the night of 29/30.6.2001, there was head-on collision of this truck with the offending bus no. UP-26-8302, which was being driven rashly and negligently by its driver. In the accident, the claimant sustained grievous injuries and his truck was also damaged. Report was lodged against the driver of the offending bus in the police station. Injured was rushed to Government Hospital Khatima and then referred to Pilibhit, where he was admitted in Bharat Nursing Home and his right leg was amputated during the course of treatment. It is alleged that the injured has incurred about Rs. One lac in the treatment and after amputation of his leg, he has become permanent disabled. The O.P.No.1, driver of the offending bus, filed written statement and denied the allegations and asserted that the accident was the result of own negligence of the injured-claimant. O.P.No.2, owner of the bus, admitted the ownership of the vehicle, but has pleaded that the bus driver was holding valid driving licence and the bus was duly insured. O.P.No.3-appellant filed written statement and pleaded that the bus driver was not holding valid driving licence and the bus was not insured with the company.

Learned Tribunal framed as many as six issues in the case. After considering the evidence on record, it has been held that the motor accident in question was result of rash and negligent driving of the bus driver alone, there was no negligence on the part of the injured and it was not a case of contributory negligence. It has also been held that the injured has become permanently disabled due to the injuries sustained by him in the motor accident and that the right leg of the claimant was amputated. The Tribunal has also held that the driver of the bus was holding a valid driving licence

and the bus was duly insured with the insurance company-appellant. The Tribunal also found that after amputation of his leg, the claimant has become permanent disabled to perform the work of a driver and has lost the prospect on that count to get employment as driver. The injured-claimant was aged **29** years at the time of accident. His income was determined at Rs. 3,000/- per month. His disability has been taken to be 75% for the purpose of determining loss of income, thereby loss of earning capacity has been assessed at Rs. 2250/- per month, i.e. Rs. 27,000/- per annum. The Tribunal has applied multiplier of ***18*** to calculate the loss of income, which came to Rs. 4,86,000/-. But taking into consideration lump-sum payment and uncertainty, after deducting 10% of it, awarded Rs. 4,37,400/- on this count. The Tribunal has found that at least Rs. 65,000/- would have been spent on the medical treatment and has awarded this amount. Besides, sum of Rs. 50,000/- has been awarded towards physical and mental agony, thereby total compensation worth Rs. 5,52,400/- has been awarded along with interest @ 10% per annum, as mentioned in the impugned order.

The learned counsel for the appellant has challenged the impugned judgment and award on the ground of contributory negligence and quantum of compensation. It is most significant to mention here that the grounds of challenge available to the insurer-appellant have been enumerated in sub-Section (2) of Section 149 of the Act and no other ground is available to the Insurance Company. No permission under Section 170 of the Act has been sought before and granted by the Tribunal to the appellant to contest the case on the grounds available to the insured or the person against whom claim has been preferred. Section 170 of the Motor Vehicles Act deals with impleadment of insurer in certain cases. On a careful perusal of the said provisions of law, we are not inclined to accept the contentions raised on behalf of the insurer-

appellant, because under the Act, the insurer has no right to challenge the judgment and award passed by the learned Tribunal except on the grounds as enumerated under sub-Section (2) of Section 149 of the Motor Vehicles Act, 1988. The law provides that appeal by the insurer can be filed on limited grounds and the grounds of challenge cannot be enlarged. We are fortified in our view by the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002) 7, Supreme Court Cases, 456].*** In that case, it has been observed by the Apex Court that ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** Thus, in view of the law laid down by the Apex Court reported in ***(2002)7, S.C.C. 456 (supra),*** which is fully applicable in the present appeal, none of the contentions raised on behalf of the appellant is tenable and has to be ignored outright.

No other point was urged or argued before us.

Ultimately, we are of the view that the present appeal is devoid of merit and must fail.

The appeal is dismissed. The impugned judgment and award is upheld. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned.

(B.S. Verma, J.) **(P.C. Verma, J.)**

26-08-2004
RCP